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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,970	10/30/2003	Keith Alan Barber	CFLAY.00208	8502

7590 05/03/2005
Carstens, Yee & Cahoon, LLP
Suite 900
13760 Noel Road
Dallas, TX 75240

EXAMINER

PADEN, CAROLYN A

ART UNIT PAPER NUMBER

1761

DATE MAILED: 05/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/696,970

Applicant(s)

BARBER ET AL.

Examiner

Carolyn A. Paden

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11-17-03</u> . | 6) <input type="checkbox"/> Other: _____ |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8 & 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bernacchi (4,744,994) in view of Rispoli (4,260,637).

Bernacchi discloses a twice-fried food that is frozen for reconstitution in the microwave. After the food is coated and fried once, the process corresponds to the cooked food substrate of step b. The second coating in Bernacchi is a combination of a batter and supplemental breading. The coated fried food is then fried again at 183-200C (see example 1) and then cooled. Although the glass transition temperature is not mentioned in Bernacchi, the frying temperatures are the same as that suggested in the specification at page 10, line 20. Thus one of ordinary skill in the art would have expected that the heating conditions of step d in claim 1 would have fallen within the range that is set forth in the claims. Claim 1 appears to differ from Bernacchi in the use of a particulate coating containing an adhesive. Rispoli teaches a self-sticking breadcrumb composition. The

breadcrumbs are of a particular mesh size and are coated with 1-35% of an adhesive (column 2, line 65). The adhesive contains 1% protein and can contain gum and/or starch. The protein may be whey protein, milk protein, soy isolate, gelatin, egg albumin or wheat gluten. At column 4, lines 41-45 the use of the coating on foods for frying or baking is disclosed. At column 4, lines 5-40, the concept of including a liquid adhesive is disclosed to include oil or water. It would have been obvious to one of ordinary skill in the art to utilize the breadcrumbs of Rispoli in frying process of Bernacchi to provide a fried chicken product having optimum selected flavor choices. It is appreciated that the mixing devices of claim 4 are not recited but no unobvious or unexpected results are seen from the use of a mixer to mix the coating materials and in the use of the paper bag taught in Rispoli. The difference between the mixers is seen to be dependent upon the amount of materials that need to be mixed. No unobvious or unexpected result is seen from the baking step in claim 7 because Rispoli teaches that both are known for use in coating food items. To bake Bernacchi instead of fry it would have been an obvious way to low the calories in the product.

Claims 1-3 & 6-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Budd (4,910,031).


Budd discloses topped savory snack foods. At example III potato chips are coated with a binder used as an adhesive made of a liquid component and a dry component. The liquid component is sucrose, water, polysorbate and lactisole. The dry component is maltodextrin. Then the chips are topped with cheese, bacon and onion flakes and heat treated in an oven at 105C for 2 minutes. After cooling the product is vacuum treated to provide a snack food with a coating. Claim 1 appears to differ from Budd in the recitation of coating the seasoning bits with an adhesive and in the recitation of the particular extent of toppings used on the chip. It would have been obvious to one having ordinary skill in the art to coat the toppings of Budd with an adhesive in order to further increase the adhesion of the coatings to the potato chips. It is appreciated that the particular amount of coatings used on the chip is not disclosed in the reference but no unobvious or unexpected result is seen from the inclusion of more toppings on the chip of Budd to improve the nutritional value and overall flavor impact of the product.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art further shows the state of the art relating to snack foods.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398 or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CAROLYN PADEN 4-29-05
PRIMARY EXAMINER